Notice No.:	95-010
Date:	July 27, 1995
Applies to:	All employers
Subject:	Excess compensation

New Legislation Affects Excess Compensation

The 1995 Legislature passed two bills related to excess compensation:

- SSB 5118 clarifies the definition of excess compensation and redefines overtime as it applies to excess compensation. *Overtime* is now defined as a payment of up to twice an employee's regular salary for time worked in addition to regular working hours. Beginning with July 1, 1995, earnings, payment for additional time in excess of the allowed rate now falls within the definition of excess compensation.

- SB 5990 requires PERS and TRS employers to give public notice prior to entering into contracts with employees that will result in liability for excess compensation. This requirement is effective on July 23, 1995.

This Notice discusses the various forms of reportable compensation, reviews the definition of excess compensation, and describes the new requirements for public notification.

Note: Please provide this information to your Human Resource Manager and Finance Officer.

Reportable Compensation Includes Regular Salary, Overtime, PERS 1 and TRS 1 Leave Cashouts, and Excess Compensation

Reportable compensation is the portion of scheduled payment of salaries or wages earned by an employee that is reportable on the monthly transmittal report. Forms of reportable compensation that are relevant to a discussion of excess compensation include:

- *Regular salary:* The base salary or wages earned for personal services.

- *Overtime:* A payment of up to twice an employee's regular daily or hourly rate of pay for time worked in addition to regular working hours.

- *Leave cashout:* A payment based on the value of any accrued leave or holiday leave.

These terms are discussed more fully on the following pages.

What is Excess Compensation?

Excess compensation is reportable compensation for which both of the following apply:

1. The payment does not qualify as regular salary or overtime. Or, for PERS Plan 1 and TRS Plan 1 members, the payment is either a cashout of more than 240 hours of annual leave or a cashout of any other form of leave.

2. The payment is earned during the period used to determine the member's highest average salary. The highest average salary is used in the retirement benefit calculations.

Determining When Compensation Increases an Employee's Retirement Allowance

- For PERS Plan 1 and TRS Plan 1 members, compensation earned in the employee's two consecutive highest-paid years is used to calculate the retirement allowance. Any reportable compensation earned in this period in excess of regular salary, overtime, or a cashout of up to 240 hours of annual leave will increase the retirement allowance.

- For all Plan 2 members, compensation earned in the 60 consecutive highest-paid service credit months is used. Any reportable compensation in excess of regular salary or overtime earned in these periods will increase the retirement allowance.

How Can You Tell Regular Salary From Excess Compensation?

Payments may be excess compensation if they are not regular salary and they increase the employee's retirement allowance. Some examples include but are not limited to:

- K-12 supplemental contracts. This includes compensation for additional time, responsibility, or incentives under RCW 28A.400.200 in addition to base contract salary. However, payments for additional time that do not exceed twice the regular rate of pay are considered overtime and are not excess compensation.

- Performance bonuses. A performance bonus is a payment for meeting or exceeding performance goals set by the employer. A performance bonus may also be a payment that is contingent on conditions that may or may not occur. For example, a school district employee could receive a performance bonus if the school's enrollment exceeds the school's capacity.

- Payments not included in the salary base. If a payment is a one-time event and is not included in the salary base, it does not become part of the salary on which subsequent salary increases or leave cashouts are calculated. Because it is not part of the salary base, it is not regular salary and is excess compensation if it increases the employee's retirement allowance.

When Are Payments For Additional Time Excluded From Excess Compensation?

Previously, no amount of compensation for time worked in addition to regular working hours was considered to be excess compensation. The 1995 Legislature redefined *overtime* for all retirement systems as any payment of up to twice an employee's regular daily or hourly rate of pay for time worked in addition to regular working hours. Compensation that is defined as overtime pay is not excess compensation. Any payment for additional time in excess of the allowable rate is excess compensation.

Note: Compensatory (comp) time is a form of overtime. Payment of comp time is not excess compensation unless it exceeds twice the daily or hourly rate of pay.

Following is an example in which a payment for additional time is excluded from excess compensation.

> Example: An employer's policy grants Presidents' Day as a paid holiday for all employees. Due to an emergency, an employee is called to work on Presidents' Day and works a full shift. The employee receives two and one-half times the regular rate for working on that day: one day's pay for the holiday, and time and one-half for the overtime hours worked.
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> Because the pay for the holiday is for regularly scheduled time, that portion of the day's compensation is not overtime; the employee's actual overtime rate is time and one-half. None of the pay received by the employee for working on Presidents' Day would be excess compensation.

If the employee's regular salary is not expressed in terms of a daily or hourly rate, DRS will divide the employee's regular annual or monthly salary by the number of regularly scheduled work days or hours in the work year or month.

In calculating the number of regularly scheduled work days or hours in a work year, DRS will include all paid holidays and paid leave days, excluding days cashed out. DRS is not bound by the number of work days or hours identified in an employment contract.

What Leave Cashouts Are Considered Excess Compensation?

A leave cashout is compensation an employee earns instead of accruing leave, or any compensation added to wages or salary that occurs simultaneously with a reduction of leave. Leave cashouts are reportable only for PERS Plan 1 and TRS Plan 1 members.

The following payments for leave cashouts are excess compensation if they increase an employee's retirement allowance:

- A cashout for more than 240 hours of annual leave.
- A cashout of any other form of leave, regardless of amount.

Annual leave is leave provided by an employer for the purpose of vacation. Annual leave does not include leave for illness, personal business (if in addition to and different than vacation leave), or other paid time off from work. The one exception is when an employer authorizes only one type of leave to provide paid leave for vacation and illness, as well as any other excused absence from work. In this situation, the leave will be considered annual leave for the purposes of determining whether compensation is excess.

In determining the nature of leave cashouts, DRS will disregard any conversion of leave by an employer from one form to another and will consider the leave to be what it was when originally earned. If compensation for the original form of leave falls under the definition of excess compensation, the employer will receive an excess compensation invoice.

Can Vehicle Allowances Be Excess Compensation?

Generally, a vehicle allowance is not reportable compensation. A vehicle allowance is sometimes paid to an employee in place of mileage reimbursements for using a personal vehicle while providing services to an employer. Because the payment is a reimbursement rather than salary, it is not a payment for services rendered and is not reportable.

In some circumstances, however, a vehicle allowance may be reportable and could be excess compensation. For example, if the employer keeps records that demonstrate that the vehicle allowance exceeded the employee's actual expenses, the portion of the allowance that exceeds actual expenses is reportable and would be excess compensation if it was paid during the compensation period used to calculate the retirement benefit.

When to Notify the Public About Excess Compensation

Beginning July 23, 1995, when a PERS or TRS employer proposes to enter into a contract with an employee or group of employees that will result in an excess compensation billing, the employer must identify the compensation provision and its potential cost for excess compensation at an open public meeting. This notification may be part of the approval process for adopting a contract in whole and need not take place in separate or additional open public meetings.

At the public meeting, the employer must provide the following information:

- Full disclosure of the nature of the proposed compensation provision. This would include an explanation of the pay provision and the services the employee is being compensated for.

- The employer’s estimate of the excess compensation billing that the employer would have to pay as a result of the proposed compensation provision. On request, DRS will provide information on how employers can develop the estimate.

When DRS bills the employer for the excess compensation, the employer must notify DRS of its compliance with the public notice requirement.

Questions?

If you have additional questions about excess compensation or the public notice requirement, contact Margaret Wimmer, Administrator for PERS and TRS, at (360) 586-9045.

Sheryl Wilson
Director

1995 DRS Notices

For a copy of a Notice, call Systems Communications at (360) 586-4515.

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95-001	**PERS, LEOFF, WSPRS, and JRS employers** Sequencing of members' annual statements
95-002	**PERS, LEOFF, WSPRS, and JRS employers** Members' annual statements
95-003	**All employers** Opportunities to enhance transmittal reporting
95-004	**Higher education employers** Service credit statements for PERS members
95-005	**All employers** Implementation of new transmittal reporting procedures
95-006	**TRS employers** General information on TRS Plan 3
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95-009	**PERS employers** Changes in reporting standby pay
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